

MT LEGISLATIVE HISTORY

Chapter 2 1979

Bill H (S) 38

Original bill & hist. C

H. Committee on State Administration

S. Committee on State Administration

Hearing Date(s) January 19 ✓ C

Hearing Date(s) January 8 ✓ C

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Date Out C

January 8 ✓ C

Did this bill originate in an interim committee? Yes No

Committee

Report

1 SENATE BILL NO. 38
2 INTRODUCED BY _____
3 BY REQUEST OF THE CODE COMMISSIONER
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND
6 CLARIFY THE LAWS RELATING TO LAW ENFORCEMENT AND FORENSIC
7 SCIENCE; REPEALING SECTIONS 31-102, 80-2001, AND 89-3902,
8 R.C.M. 1947."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 44-1-404, MCA, is amended to read:
12 "44-1-404. Status of replacements for patrolmen who
13 enter the armed forces. Patrolmen filling vacancies caused
14 by the incumbents' entrance into the armed forces of the
15 United States shall, on the return of the incumbents, be
16 placed in the patrol reserve without pay, ~~otherwise except~~
17 ~~that~~ they shall hold their probationary or permanent
18 appointments while there are sufficient operating funds.
19 Reserve patrolmen shall then be used for future replacements
20 in the permanent patrol."
21 Section 2. Section 44-1-501, MCA, is amended to read:
22 "44-1-501. Payment of salaries. All salaries of
23 members of the highway patrol shall be paid out of ~~the~~
24 highway department's account in the earmarked revenue fund
25 ~~of the department of highways.~~"

1 Section 3. Section 44-1-601, MCA, is amended to read:
2 "44-1-601. Probationary training and service --
3 patrolmen. ~~At~~ A new ~~patrolmen~~ patrolman shall be placed
4 under probationary training and service for a period of 6
5 months to 1 year, ~~during which time the division must~~
6 ~~recommend permanent appointments; otherwise if the division~~
7 ~~fails to recommend a permanent appointment by the end of the~~
8 ~~probationary period,~~ the probationary ~~patrolmen~~ patrolman
9 will automatically be discharged."

10 Section 4. Section 44-1-602, MCA, is amended to read:
11 "44-1-602. Probationary training and service --
12 supervisory personnel. All newly appointed supervisory
13 personnel shall be placed under probationary training and
14 service for a period of 6 months to 1 year, ~~during which~~
15 ~~time the division must recommend permanent appointments;~~
16 ~~otherwise if the division fails to recommend a permanent~~
17 ~~appointment by the end of the probationary period,~~ the
18 ~~probationary~~ supervisory personnel will automatically revert
19 to their previous ranks without prejudice."

20 Section 5. Section 44-1-612, MCA, is amended to read:
21 "44-1-612. Cause for suspension, demotion, or
22 discharge. Cause for suspension, demotion, or discharge ~~will~~
23 be is:
24 (1) conviction of any crime involving moral turpitude
25 in any court of competent jurisdiction subsequent to the

1 commencement of such employment;

2 (2) gross neglect of duty or willful violation or
3 disobedience of orders or regulations;

4 (3) loitering about or entering places of ill fame or
5 ill repute or where in which illegal gambling is known to be
6 conducted or to be in progress, except in the immediate
7 discharge of duty;

8 (4) conduct unbecoming an officer;

9 (5) drinking intoxicating liquor while using
10 state-owned cars or in uniform or being intoxicated in a
11 public place;

12 (6) sleeping while on duty;

13 (7) incapacity or partial incapacity materially
14 affecting ~~his~~ ability to perform ~~his~~ official duties;

15 (8) gross inefficiency in performing duties; ~~or~~

16 (9) willful disobedience of rules adopted by the
17 division governing the conduct and discipline of members of
18 the patrol."

19 Section 6. Section 44-1-801, MCA, is amended to read:

20 "44-1-801. Notice of hearing. (1) The division shall,
21 at least 10 days before the time appointed for a hearing,
22 serve written notice on the accused patrolman, specifying
23 the charge or charges filed and stating the name of the
24 person or persons making the charge or charges--~~on--the~~
25 ~~accused patrolman personally if his whereabouts is known in~~

1 the state.

2 (2) ~~If the accused patrolman is located within the~~
3 ~~state and his whereabouts is known, the service required by~~
4 ~~subsection (1) shall be made personally. If the accused~~
5 ~~patrolman is located outside the state and his whereabouts~~
6 ~~is known, service may be made by mailing the written notice~~
7 ~~to his place of residence. If, at the time, the whereabouts~~
8 ~~of the accused patrolman is unknown or if he be outside of~~
9 ~~the state, service may be made upon him by mailing the~~
10 ~~written notice to him at his last-known place of residence~~
11 ~~in Montana."~~

12 Section 7. Section 44-1-805, MCA, is amended to read:

13 "44-1-805. Reinstatement and ~~back--pay~~ backpay upon
14 exoneration. If after the hearing the division finds that
15 the charge or charges made against the patrolman be ~~are~~ not
16 true, the division shall reinstate the accused patrolman to
17 his position and rank and shall order the payment of any
18 salary withheld pending the determination of the charge or
19 charges."

20 Section 8. Section 44-1-806, MCA, is amended to read:

21 "44-1-806. Disciplinary action. If after a hearing the
22 division finds that any ~~such~~ charge or charges made against
23 the patrolman be ~~are~~ true, it may punish the offending party
24 by reprimand, suspension without pay, demotion, or
25 discharge."

Section 9. Section 44-1-807, MCA, is amended to read:

"44-1-807. Length of suspension. Any A member under suspension shall be on leave without pay and for a period not to exceed 30 days-in-time."

Section 10. Section 44-1-901, MCA, is amended to read:

"44-1-901. Right to appeal. (1) Any patrolman who is suspended, demoted, or discharged ~~may have~~ has a right of appeal to the district court of Lewis and Clark County.

(2) ~~Such~~ The appeal must be made within 10 days after such ~~the~~ decision or determination of the division."

Section 11. Section 44-1-903, MCA, is amended to read:

"44-1-903. Reinstatement and ~~back-pay~~ backpay upon reversal or modification. If the decision or determination of the division ~~shall be~~ is finally reversed or modified by the district court, the accused patrolman ~~shall~~ must be reinstated in his position, and upon reinstatement, the division shall pay to the patrolman any salary or wages withheld from him pending the determination of the charge or charges, or take such action as may be directed by the court."

Section 12. Section 44-1-1001, MCA, is amended to read:

"44-1-1001. Offenses for which patrolmen may make arrests. ~~In addition to the above duties, the (1) The~~ highway patrol chief and all patrolmen may make arrests for

the following offenses ~~if committed in the presence of the chief or any of the patrolmen if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than 2,500 inhabitants, upon the request of any peace officer or the mayor of the city or town listed in subsection (2) under the following circumstances:~~

(a) the offense is committed in the presence of the chief or any patrolman;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(1)(a) deliberate homicide;

(2)(b) assault with a deadly weapon;

(3)(c) arson;

(4)(d) criminal mischief;

(5)(e) burglary;

(6)(f) theft;

(7)(g) kidnapping;

(8)(h) illegal transportation of narcotics; or

(9)(i) violation of the Dyer Act regarding the

1 transportation of stolen automobiles."

2 Section 113. Section 44-1-1005, MCA, is amended to

3 read:

4 "44-1-1005. Enforcement of motor carriers' licensing

5 law. A highway patrolman has the same authority to enforce

6 provisions of the motor carriers' licensing law as that

7 granted the public service commission under 69-12-203. The

8 highway patrol bureau division shall cooperate with the

9 public service commission and the department of highways to

10 assure minimum duplication and maximum coordination of

11 enforcement effort."

12 Section 14. Section 44-1-1101, MCA, is amended to

13 read:

14 "44-1-1101. Duty of patrolman upon making an arrest.

15 Patrolmen, upon making an arrest, a patrolman shall:

16 either

17 (1) deliver the offender to the nearest justice of the

18 peace during office hours or to the county jail; or, in lieu

19 thereof

20 (2) deliver to give the offender a form of summons

21 describing the nature of the offense with instructions

22 thereon for the offender to report to the nearest justice of

23 the peace; or, in lieu of reporting to the nearest justice

24 of the peace, the patrolman has the right to set and

25 (3) accept a deposit for appearance justifiable for

1 the offense charged shall determined pursuant to Title 46,

2 chapter 29, part 32"

3 Section 115. Section 44-1-1102, MCA, is amended to

4 read:

5 "44-1-1102. Procedure when patrolman accepts bail. (1)

6 In the event if the patrolman sets and accepts bail, he

7 shall give assigned receipt to the offender, setting forth

8 the amount received. The patrolman shall then deliver the

9 bail money to the justice of the peace before whom the

10 offender is to appear, and the justice of the peace shall

11 give a receipt to the patrolman for the amount of bail money

12 delivered. After the filing of the complaint and the

13 appearance of the defendant, the justice of the peace shall

14 assume jurisdiction and may set off and accept further

15 appearance bail bond.

16 (2) For the purpose of this chapter only, the fees of

17 justices of the peace in all offenses in which the statutory

18 fine is \$5 or less shall be \$1, but if the statutory fine is

19 in excess of \$5, the justices of the peace shall be

20 permitted the fee now prescribed by law provided that no

21 additional fees shall be paid justices of the peace where

22 statutes are fixed by law"

23 Section 116. Section 44-2-115, MCA, is amended to read:

24 "44-2-115. Powers and duties of agents. An agent shall

25 have the power and duty to:

1 (1) assist city, county, state, and federal law
2 enforcement agencies at their request by providing expert
3 and immediate aid in investigation and solution of felonies
4 committed in the state;

5 (2) assist ~~various any~~ law enforcement ~~schools~~ school
6 held in the state for law enforcement officers when
7 requested;

8 ~~(3) cooperate with the department of justice;~~

9 ~~(4)(3)~~ act as a peace officer, as defined in the laws
10 of Montana, when engaged in assisting or acting under the
11 direction of city, county, state, and federal law
12 enforcement agencies as provided in this section."

13 Section 17. Section 44-2-201, MCA, is amended to read:

14 "44-2-201. Establishment of state system. The
15 department of justice shall cooperate with and assist
16 sheriffs, chiefs of police, and other law enforcement
17 officers in the establishment of a complete state system of
18 criminal identification."

19 Section 18. Section 44-2-202, MCA, is amended to read:

20 "44-2-202. Assistance to and instruction of local
21 officers. The department shall assist and, when practicable,
22 instruct sheriffs, chiefs of police, and other law
23 enforcement officers in establishing efficient local bureaus
24 of identification in their districts and in making them
25 proficient in procuring and maintaining fingerprint

1 records."

2 Section 19. Section 44-2-303, MCA, is amended to read:

3 "44-2-303. Federal cost sharing. The attorney general
4 ~~is hereby directed to~~ shall contact federal law enforcement
5 agencies or officials relative to federal cost sharing in
6 the teletypewriter communications system, and if such funds
7 are available from federal sources, the attorney general ~~is~~
8 ~~hereby authorized to~~ may sign agreements with the federal
9 agencies. Any federal funds received in any biennium for
10 which Montana funds have been appropriated shall be
11 ~~deposited to the credit of the communication fund in the~~
12 system's account and shall be used, if at all possible, to
13 reduce the spending of ~~moneys~~ money appropriated from the
14 general fund."

15 Section 20. Section 44-2-313, MCA, is amended to read:

16 "44-2-313. Payment of charge. Such charge shall be
17 billed monthly to the agencies. Payments made as a result of
18 the billing shall be remitted to the attorney general and
19 ~~shall be~~ deposited by him in a special account in the state
20 ~~treasurer's office treasury.~~"

21 Section 21. Section 44-2-316, MCA, is amended to read:

22 "44-2-316. Assessment for personnel. A special
23 ~~prorated~~ assessment ~~pro-rata~~ shall be made against all
24 participating agencies for personnel necessary to assist in
25 the operation at one central location or key point at which

1 there is a federal interest. This assessment shall be made
 2 monthly, ~~the same as to the operational assessment change. It~~
 3 shall be transmitted, and deposited, and drawn by warrant as
 4 are other warrants as provided in 44-2-312 through 44-2-315,
 5 except that the assessment shall ~~may~~ not be levied against
 6 the one central station for which the assessment is made."

7 Section 22. Section 44-3-213, MCA, is amended to read:
 8 "44-3-213. Report to county attorney. When the cause
 9 of death has been established within reasonable medical
 10 certainty by the state medical examiner or his associate,
 11 whether by review of a coroner's report or by personal
 12 examination, ~~he the state medical examiner~~ shall make
 13 available in writing to the county attorney his
 14 determination as to the cause of death."

15 Section 23. Section 44-3-404, MCA, is amended to read:

16 "44-3-404. Criminal penalty. A person is guilty of a
 17 misdemeanor and may be fined not more than \$500 or
 18 imprisoned in the county jail for not more than 1 year, or
 19 both, if he:

20 (1) ~~willfully purposely~~ fails to report or conceals a
 21 death;

22 (2) refuses to make available prior medical or other
 23 information in a death investigation; or

24 (3) without an order from the coroner or state medical
 25 examiner, ~~willfully purposely~~ touches, removes, or disturbs

1 a corpse, its clothing, or anything near the corpse under
 2 investigation with the intent to alter the evidence or
 3 circumstances surrounding the death."

4 Section 24. Section 44-4-101, MCA, is amended to read:
 5 "44-4-101. Position established. There is created
 6 within the department of justice ~~a the position of~~ training
 7 coordinator for county attorneys."

8 Section 25. Section 44-4-103, MCA, is amended to read:

9 "44-4-103. Functions. The training coordinator shall
 10 perform the functions assigned by the ~~department head~~
 11 ~~attorney general~~. The functions may include but are not
 12 limited to the following:

13 (1) providing local training in current aspects of the
 14 criminal law for county attorneys and other law enforcement
 15 personnel;

16 (2) assisting in developing and disseminating
 17 standards, procedures, and policies which will insure that
 18 criminal laws are applied consistently and uniformly
 19 throughout the state of Montana;

20 (3) consolidating present and past information on
 21 important aspects of the criminal law and providing a pool
 22 of official opinions, legal briefs, and other relevant
 23 criminal law information;

24 (4) providing assistance with research, briefs, or
 25 other technical services requested by a county attorney or

1 law enforcement official;

2 (5) applying for and disbursing federal funds
3 available to aid the prosecutorial function."

4 Section 26. Section 44-11-202, MCA, is amended to
5 read:

6 "44-11-202. Employing entity to pay normal expenses of
7 assisting officer -- reimbursement. (1) The law enforcement
8 entity employing a peace officer who renders assistance
9 shall make all wage, pension, and disability payments and
10 payments for damage to clothing and equipment due to the
11 officer as a result of the rendering of assistance and shall
12 pay any medical expense incurred by the officer in rendering
13 assistance for which the officer is not otherwise entitled
14 to reimbursement by operation of law or a contract. The
15 employing entity shall also provide workers' compensation
16 coverage for its employees while they are rendering
17 assistance.

18 (2) ~~Upon making such payments such if it so requests,~~
19 ~~the law enforcement entity shall must if it so requests,~~ be
20 reimbursed by the law enforcement entity that requested the
21 services for all payments made for wages and damage to
22 clothing and equipment and for any medical expense for which
23 neither the employing entity nor the officer is otherwise
24 entitled to reimbursement by operation of law or a
25 contract."

1 Section 27. Section 39-72-606, MCA, is amended to
2 read:

3 "39-72-606. Autopsy. Upon the filing of a claim for
4 compensation for death caused by an occupational disease
5 where if an autopsy is necessary to determine the cause of
6 death, an autopsy shall be ordered by the division. The
7 autopsy shall be made under the supervision of the county
8 coroner or a medical examiner. The division may designate a
9 duly licensed physician who is a specialist in such
10 examinations to perform or attend the autopsies and to
11 certify his findings thereon. The findings shall be examined
12 by the physicians submitting reports under the provisions of
13 39-72-604 and 39-72-605 before the final reports under those
14 sections are submitted to the division."

15 Section 28. Section 50-15-403, MCA, is amended to
16 read:

17 "50-15-403. Preparation of certificate when death
18 medically attended. A person in charge of interment shall:

19 (1) obtain personal data required by the department
20 from persons best qualified to supply the data and enter it
21 on the death or fetal death certificate;

22 (2) ~~(a)~~ present the death certificate to the physician
23 last in attendance upon the deceased, or the coroner having
24 jurisdiction, or the state medical examiner, who shall
25 certify the cause of death according to his best knowledge

1 and belief; or

2 ~~(3)(b)~~ present the fetal death certificate to the
3 physician, midwife, or other person in attendance, who shall
4 certify the fetal death and supply any pertinent additional
5 medical data;

6 ~~(4)(3)~~ notify the local registrar if the death or
7 fetal death occurred without attendance or if the physician
8 last in attendance failed to sign the death certificate;

9 ~~(5)(4)~~ file the death or fetal death certificate with
10 the local registrar within 3 days after the occurrence."

11 Section 29. Section 50-15-404, MCA, is amended to
12 read:

13 "50-15-404. Preparation of certificate when death not
14 medically attended. (1) If the death or fetal death occurred
15 without medical attendance or the physician last in
16 attendance failed to sign the death certificate, the local
17 registrar may complete the certificate on the basis of
18 information received from persons having knowledge of the
19 facts.

20 (2) If it appears the death or fetal death resulted
21 from other than natural causes, the local registrar shall
22 notify the coroner and the state medical examiner for
23 investigation and certification."

24 Section 30. Section 50-15-405, MCA, is amended to
25 read:

1 "50-15-405. Permit for disposition of body. (1) No
2 dead body ~~shall~~ may be disposed of or removed from a
3 registration district until a permit for disposition or
4 removal has been issued by the local registrar.

5 ~~(2) No permit shall~~ may be issued until a death
6 certificate, fetal death certificate, or notice of delay is
7 required in subsection (3) of this section has been filed
8 with the local registrar.

9 ~~(3) If the cause of death or fetal death cannot be~~
10 ~~determined within 3 days after the occurrence, the attending~~
11 ~~physician, or coroner, or medical examiner shall give the~~
12 ~~local registrar written notice of the reason for delay so~~
13 ~~that a permit may be issued for disposition of the body."~~

14 Section 31. Section 61-7-111, MCA, is amended to read:

15 "61-7-111. Accident report forms. (1) The division
16 shall prepare and, upon request, supply to police
17 departments, coroners, medical examiners, sheriffs, garages,
18 and other suitable agencies or individuals forms for
19 accident reports required hereunder, appropriate with
20 respect to the persons required to make such reports and the
21 purposes to be served. ~~The written reports to be made by~~
22 ~~persons involved in accidents and by investigating officers~~
23 ~~shall call for sufficiently detailed information to disclose~~
24 ~~with reference to a traffic accident the causes, conditions~~
25 ~~then existing, and the persons and vehicles involved.~~

-End-

(2) Every accident report required to be made in writing shall be made on the appropriate form approved by the division and shall contain all of the information required therein unless not available.

(3) The division may suspend the license or permit to drive of any resident ~~and any or the~~ nonresident operating privilege of any person failing to report an accident as herein provided until such report has been filed. Any person convicted of failing to report an accident by the quickest means of communication or failing to forward a written report as required herein ~~shall be deemed~~ is guilty of a misdemeanor and ~~punished~~ punishable by a fine of not more than \$25."

Section 32. Section 61-7-112, MCA, is amended to read:

"61-7-112. Coroners ~~and medical examiners~~ to report. Every ~~Each~~ coroner, ~~medical examiner,~~ or other official performing like functions shall, on or before the 10th day of each month, report in writing to the division the ~~death~~ deaths of ~~any person~~ all persons within his respective jurisdiction during the preceding calendar month as the result of ~~a traffic accident~~ accidents, giving the time and place of the ~~each~~ accident and the circumstances relating thereto."

Section 33. Repealer. Sections 31-102, 80-2001, and 82-3902, R.C.M. 1947, are repealed.

SENATE BILLSCOMMITTEE ON STATE ADMINISTRATION

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
7	1/4/79	1/9/79	1/9/79	1/9/79					
24	1/4	1/9	1/9	1/9					
28	1/4	1/10-1/22	1/22	1/22					
38	1/4	1/8	1/8	1/8					
46	1/4	1/10	1/10	1/10					
48	1/9	1/12	1/12	1/12					
74	1/6	1/12	1/12	1/12					
74	1/19		1/26	1/26 As Amended					
90	1/12	1/25	1/25	1/25					
91	1/12	1/19-1/22	1/22		1/22				
107	1/17	1/24	1/24		1/24-Majority Report. 1/24 Minority report Do Pass				
112	1/17	1/22	1/22	1/22					
114	1/17	1/23-1/24	1/24	1/24 As Amended					
115	1/17	1/23-1/24	1/24	1/24					
116	1/17	1/23-1/24	1/24	1/24 As Amended					

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AUG 10 1979
OF MONTANA

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 8, 1979

The second meeting of the Senate State Administration Committee was called to order by Senator Pete Story, Chairman, on the above date, in Room 442 of the State Capitol Building at 10:00 o'clock A. M.

ROLL CALL: All members were present except Senators Roskie, Brown and Rasmussen who were absent.

CONSIDERATION OF SENATE BILL No. 38: The Chairman called on Joan Mayer of the Legislative Council to present her testimony on Senate Bill No. 38.

Ms. Mayer explained this was a Code Commissioner Bill for the purpose of clarifying certain language in the laws relating to law enforcement and forensic science. Other changes were to provide consistency with existing laws and correct grammatical language or terminology. An example of such changes was pointed out on page 14, line 8, which was changed from "he" to "the state medical examiner" for clarity. A complete list of proposed changes was summarized in an attached letter from the Legislative Council, a copy of which is attached to these original Minutes, which also included an explanation for the repealer clauses.

Sen. Hafferman questioned the use of the word "punishable" on page 17, line 12, and was assured the change was for language clarification purposes only and would not change the present effect of the law.

Chairman Story called for proponents of the Bill; there being none, he asked for any opponents. None appeared.

The Chairman then asked for comments from the Committee members and questioned if the explanation statement would accompany the Bill. He was assured by Ms. Mayer that all these bills would have the explanation statement attached when placed on the Senators' desks.

There being no further questions, the hearing on Senate Bill No. 38 was closed.

Senator Pat Ryan made a motion that Senate Bill No. 38 DO PASS; motion was seconded and carried by unanimous vote.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 10:25 A.M.

A handwritten signature in dark ink, appearing to read "Pete Story", is written over a horizontal line at the bottom right of the page.

ROLL CALL

STATE ADMINISTRATION COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Senator Pete Story, Chairman	✓		
Senator George F. Roskie, V. Chmn.		✓	
Senator Bob Brown		✓	
Senator A. T. (Tom) Rasmussen		✓	
Senator Patrick L. Ryan	✓		
Senator Greg Jergeson	✓		
Senator William F. Hafferman	✓		

Each Day Attach to Minutes.

SENATE STATE ADMINISTRATION COMMITTEE

BILL SB. 38

VISITORS' REGISTER

DATE Jan. 8, 197

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

ROLL CALL VOTE RECORD

SENATE COMMITTEE STATE ADMINISTRATION

Date January 8, 1979 SENATE Bill No. 38 Time

NAME	YES	NO
Senator Pete Story, Chairman	✓	
Senator George F. Roskie, V. Chairman	✓	
Senator Bob Brown	✓	
Senator A. T. (Tom) Rasmussen	✓	
Senator Patrick L. Ryan	✓	
Senator Greg Jergeson	✓	
Senator William F. Hafferman	✓	

Jennie L. Palmer
Secretary

Pete Story
Chairman

Motion: Senator Pat Ryan moved that Senate Bill No. 38 DO

PASS; motion was seconded and carried by unanimous vote.

(include enough information on motion--put with yellow copy of committee report.)

January 8 1979

MR. President

We, your committee on STATE ADMINISTRATION

having had under consideration SENATE Bill No. 38

Respectfully report as follows: That SENATE Bill No. 38

Introduced Bill,

DO PASS

STATE ADMINISTRATION COMMITTEE

46 Legislature

Page 1

SENATE BILLS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 7	relating to the compensation of the Board of Trustees of the Montana Historical Society	1/15/79	Story	1/18/79	Be Concurred In	1-18
SB 24	relating to employment of assistants to the insurance commissioner	1/15/79	Story	1/18/79	Be Concurred In	1-18
SB 38	to revise & clarify laws relating to law enforcement and forensic science	1/16/79	Story	1/19/79	Be Concurred In	1-19
SB 48	to permit the governor to designate an interstate coordinator for the western interstate corrections compact	1/20/79	Ryan	1-26-79	Be Concurred In	1-30
SB 28	providing that grants from an approp. made by HB 708, 1978, for the solid waste management project need not be repaid	1/29/79	Story	S.N. 1-29 3-2-79	Re Amended Be Concurred In	3-13
SB 112	generally revising /clarifying laws relating to elections	1/29/79	Graham	2-28-79	Be Concurred In Same 3-8	3-2

August so we could have some more time. Could I put together a suggested amendment?

O'CONNELL moves to hold the bill in committee for Bousliman's amendment, the motion is carried unanimously.

EXECUTIVE SESSION

SB 38-BARDANOUVE moves that the bill BE CONCURRED IN, motion carries unanimously. MAGONE moves to put SB 38 on the CONSENT CALENDAR, motion carries unanimously.

HB 51-O'CONNELL moves DO PASS, motion carries unanimously. FEDA moves that the bill be placed on the CONSENT CALENDAR.

BARDANOUVE-I wonder if the members would quite understand what we were doing without explaining this?

FEDA withdraws his motion for the Consent Calendar.

BARDANOUVE-I'm not an opponent of the Consent Calendar; but when I hear a member get up on the floor and only talk a few minutes, I know what the bill does.

O'CONNELL-I have to concur with Francis; I have heard from people in the gallery that they don't know what is going on -- but many people agree that these things should have at least a few minutes of explanation.

HB 186-O'CONNELL moves the amendment striking Section 3 and making the necessary title amendment, motion carries. KROPP moves AS AMENDED DO PASS, motion carries unanimously.

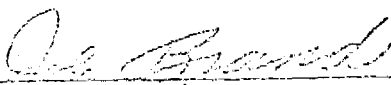
HB 187-BRAND-I'm going to put this in a subcommittee for the purposes of amendment.

BARDANOUVE-I have no strong feelings except that it will eliminate alot of paper and extraneous work. FEDA-What about one fiscal report - like the one we should have gotten this year and don't print another one for the year that just ended.

BRAND-That's what the bill is trying to do but our problem seems to be the timing on the one report. DONALDSON-I like the way the bill is now because it will give you a good picture of the previous biennium. The printing is slight next to the work load on the agency and if you could slide it out for then I'm sure it would help.

JOHNSTON moves to adjourn, so moved and carried.

Adjourn: 10:00 a.m.



Joe Brand, Chairman



Nita Storke, Secretary

January 19, 1979

The meeting was called to order by Chairman Brand at 9:00 a.m., roll call was taken with all members present.

SB 38-Sponsored by Sen. Story -- This is another little Code Commissioner bill. The Senate Committee examined this minutely. I will leave a copy of this review with you (see Attachment #1). We found no zingers in it.

NO PROPONENTS OR OPPONENTS

HB 51-Sponsored by Rep. Donaldson -- As you are well aware, the employee contributes to PERS and can get this when he terminates. At termination, if the employee has anything of value to the state, we can take the money from his contributions. Page 2, line 14: "it shall be signed by both the employer and the member" - this mandates that any money withheld shall be agreed to by both parties, so both have to work with this.

LARRY NACHTSHEIM-PERS Administrator -- (See Attachment #2 for his essential testimony) What we are trying to do is expedite the whole process so that the employee can't hold up an employee's money for unknown reasons -- both people have to participate in this agreement. The employee may not have the money to pay a claim against him, but has \$800 in PERS - so if we can get his money through that we can pay the claim.

TOM SCHNEIDER-Montana Public Employees Association -- We would support the bill because it is a mutual agreement. The employee can't enter in unless he fully agrees. Up to now there's been the potential for the situation to polarize due to ill feelings, so this will expedite the whole thing.

NO OPPONENTS

SALES-Would this extend to delinquent taxes owed? NACHTSHEIM-I don't think that would be an issue here. The Department of Revenue has their own way of collecting taxes.

HB 186-Sponsored by Rep. Bardonouye -- I want to propose a major amendment before I get into this: I want to strike all of Section 3 and make the necessary title amendments. As it is written, there are two subjects mentioned and that is improper; so we are making this a one subject bill and therefore simplifying it. Four years ago we transferred the Budget Office to the Governor's Office but this part of the law was overlooked. The allotment system wasn't transferred with the rest so this takes care of that. This doesn't change the quarterly allotment program -- which controls the expenditures of a department -- if the department is overspending, they can cut the allotment so the department only gets 1/4 of their budget rather than the full one.

GEORGE BOUSLIMAN-Budget Director -- We support this and requested that it be introduced.

TOM SCHNEIDER-MPES -- We really don't care now, but we want the bill amended or we will be adamantly opposed. If he wanted to repeal Section 3 we could feel better about it.

NO OPPONENTS

SENATE BILL NO. 38

INTRODUCED BY STORY

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LAW ENFORCEMENT AND FORENSIC SCIENCE; REPEALING SECTIONS 31-102, 80-2001, AND 89-3902, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 44-1-404, MCA, is amended to read:

"44-1-404. Status of replacements for patrolmen who enter the armed forces. Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States shall, on the return of the incumbents, be placed in the patrol reserve without pay; otherwise ~~except that~~ they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol."

Section 2. Section 44-1-501, MCA, is amended to read:

"44-1-501. Payment of salaries. All salaries of members of the highway patrol shall be paid out of ~~the highway department's account in the earmarked revenue fund of the department of highways.~~"

Section 3. Section 44-1-601, MCA, is amended to read:

"44-1-601. Probationary training and service -- patrolmen. ~~At a new patrolmen~~ ~~patrolman~~ shall be placed under probationary training and service for a period of 6 months to 1 year, during--which--time--the--division--must recommend--permanent--appointments--otherwise If the division fails to recommend a permanent appointment by the end of the probationary period, the probationary patrolmen ~~patrolman~~ will automatically be discharged."

Section 4. Section 44-1-602, MCA, is amended to read:

"44-1-602. Probationary training and service -- supervisory personnel. All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year, during-which time-the-division--must--recommend--permanent--appointments; otherwise If the division fails to recommend a permanent appointment by the end of the probationary period, the probationary supervisory personnel will automatically revert to their previous ranks without prejudice."

Section 5. Section 44-1-612, MCA, is amended to read:

"44-1-612. Cause for suspension, demotion, or discharge. Cause for suspension, demotion, or discharge ~~will~~ be is:

(1) conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the

1 commencement of such employment;

2 (2) gross neglect of duty or willful violation or
3 disobedience of orders or regulations;

4 (3) loitering about or entering places of ill fame or
5 ill repute or where in which illegal gambling is known to be
6 conducted or to be in progress, except in the immediate
7 discharge of duty;

8 (4) conduct unbecoming an officer;

9 (5) drinking intoxicating liquor while using
10 state-owned cars or in uniform or being intoxicated in a
11 public place;

12 (6) sleeping while on duty;

13 (7) incapacity or partial incapacity materially
14 affecting his ability to perform his official duties;

15 (8) gross inefficiency in performing duties; or

16 (9) willful disobedience of rules adopted by the
17 division governing the conduct and discipline of members of
18 the patrol."

19 Section 6. Section 44-1-801, MCA, is amended to read:

20 "44-1-801. Notice of hearing. (1) The division shall,
21 at least 10 days before the time appointed for a hearing,
22 serve written notice on the accused patrolman specifying
23 the charge or charges filed and stating the name of the
24 person or persons making the charge or charges--on--the
25 ~~accused-patrolman-personally-if-his-whereabouts-is-known-in~~

1 the-state.

2 (2) If the accused patrolman is located within the
3 state and his whereabouts is known, the service required by
4 subsection (1) shall be made personally. If the accused
5 patrolman is located outside the state and his whereabouts
6 is known, service may be made by mailing the written notice
7 to his place of residence. If, at the time, the whereabouts
8 of the accused patrolman is unknown-or-if-he-be-outside-of
9 the-state, service may be made upon him by mailing the
10 written notice to him at his last-known place of residence
11 in Montana."

12 Section 7. Section 44-1-805, MCA, is amended to read:

13 "44-1-805. Reinstatement and back--pay backpay upon
14 exoneration. If after the hearing the division finds that
15 the charge or charges made against the patrolman be are not
16 true, the division shall reinstate the accused patrolman to
17 his position and rank and shall order the payment of any
18 salary withheld pending the determination of the charge or
19 charges."

20 Section 8. Section 44-1-806, MCA, is amended to read:

21 "44-1-806. Disciplinary action. If after a hearing the
22 division finds that any such charge or charges made against
23 the patrolman be are true, it may punish the offending party
24 by reprimand, suspension without pay, demotion, or
25 discharge."

Section 9. Section 44-1-807, MCA, is amended to read:

"44-1-807. Length of suspension. Any A member under suspension shall be on leave without pay and for a period not to exceed 30 days-in-time."

Section 10. Section 44-1-901, MCA, is amended to read:

"44-1-901. Right to appeal. (1) Any patrolman who is suspended, demoted, or discharged may have has a right of appeal to the district court of Lewis and Clark County.

(2) Such ~~the~~ appeal must be made within 10 days after such ~~the~~ decision or determination of the division."

Section 11. Section 44-1-903, MCA, is amended to read:

"44-1-903. Reinstatement and back--pay backpay upon reversal or modification. If the decision or determination of the division ~~shall be~~ is finally reversed or modified by the district court, the accused patrolman ~~shall must~~ be reinstated in his position, and Upon reinstatement, the division shall pay to the patrolman any salary or wages withheld from him pending the determination of the charge or charges, or take such action as may be directed by the court."

Section 12. Section 44-1-1001, MCA, is amended to read:

"44-1-1001. Offenses for which patrolmen may make arrests. ~~in--addition--to--the--above--duties--the~~ (1) The highway patrol chief and all patrolmen may make arrests for

the following offenses ~~if committed in the presence of the chief or any of the patrolmen if committed in a rural district upon the request of a peace officer or if committed in a city or town of less than 2,500 inhabitants upon the request of any peace officer or the mayor of the city or town~~ listed in subsection (2) under the following circumstances:

(a) the offense is committed in the presence of the chief or any patrolman;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(1)(a) deliberate homicide;

(2)(b) assault with a deadly weapon;

(3)(c) arson;

(4)(d) criminal mischief;

(5)(e) burglary;

(6)(f) theft;

(7)(g) kidnapping;

(8)(h) illegal transportation of narcotics; or

(9)(i) violation of the Dyer Act regarding the

1 transportation of stolen automobiles."

2 Section 13. Section 44-1-1005, MCA, is amended to
3 read:

4 "44-1-1005. Enforcement of motor carriers' licensing
5 law. A highway patrolman has the same authority to enforce
6 provisions of the motor carriers' licensing law as that
7 granted the public service commission under 69-12-203. The
8 highway--patrol--bureau division shall cooperate with the
9 public service commission and the department of highways to
10 assure minimum duplication and maximum coordination of
11 enforcement effort."

12 Section 14. Section 44-1-1101, MCA, is amended to
13 read:

14 "44-1-1101. Duty of patrolman upon making an arrest.
15 Patrolmen--upon Upon making an arrest, a patrolman shall
16 either

17 (1) deliver the offender to the nearest justice of the
18 peace during office hours or to the county jail; or--in--lieu
19 thereof,

20 (2) deliver--to give the offender a form of summons
21 describing the nature of the offense with instructions
22 thereon for the offender to report to the nearest justice of
23 the peace; or--in--lieu--of--reporting--to--the--nearest--justice
24 of--the--peace--the--patrolman--has--the--right--to--set--and

25 (3) accept a deposit for--appearance--justifiable--for

1 the--offense--charged bail determined pursuant to Title 46,
2 chapter 9, part 3."

3 Section 15. Section 44-1-1102, MCA, is amended to
4 read:

5 "44-1-1102. Procedure when patrolman accepts bail. (1)
6 in--the--event If the patrolman sets and accepts bail, he
7 shall give a signed receipt to the offender, setting forth
8 the amount received. The patrolman shall then deliver the
9 bail money to the justice of the peace before whom the
10 offender is to appear, and the justice of the peace shall
11 give a receipt to the patrolman for the amount of bail money
12 delivered. After the filing of the complaint and the
13 appearance of the defendant, the justice of the peace shall
14 assume jurisdiction and may setv--fixv and accept further
15 appearance bail bond.

16 (2)--For--the--purpose--of--this--chapter--only--the--fees--of
17 justices--of--the--peace--in--all--offenses--in--which--the--statutory
18 fine--is--\$5--or--less--shall--be--\$1v--but--if--the--statutory--fine--is
19 in--excess--of--\$5v--the--justices--of--the--peace--shall--be
20 permitted--the--fee--now--prescribed--by--law--provided--that--no
21 additional--fees--shall--be--paid--justices--of--the--peace--where
22 salaries--are--fixed--by--law"

23 Section 16. Section 44-2-115, MCA, is amended to read:

24 "44-2-115. Powers and duties of agents. An agent shall
25 have the power and duty to:

(1) assist city, county, state, and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) assist various ~~any~~ law enforcement schools ~~school~~ held in the state for law ~~enforcement~~ officers when requested;

~~{3}--cooperate-with-the-department-of-justice;~~

~~{4}{1}~~ act as a peace officer, as defined in the laws of Montana, when engaged in assisting or acting under the direction of city, county, state, and federal law ~~enforcement~~ agencies as provided in this section."

Section 17. Section 44-2-201, MCA, is amended to read:

"44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law ~~enforcement~~ officers in the establishment of a complete state system of criminal identification."

Section 18. Section 44-2-202, MCA, is amended to read:

"44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law ~~enforcement~~ officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint

records."

Section 19. Section 44-2-303, MCA, is amended to read:

"44-2-303. Federal cost sharing. The attorney general ~~is hereby directed to~~ shall contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general ~~is hereby authorized to~~ may sign agreements with the federal agencies. Any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited to--the--credit--of--the--communication--fund in the system's account and shall be used, if at all possible, to reduce the spending of moneys ~~money~~ appropriated from the general fund."

Section 20. Section 44-2-313, MCA, is amended to read:

"44-2-313. Payment of charge. Such charge shall be billed monthly to the agencies. Payments made as a result of the billing shall be remitted to the attorney general and ~~shall be~~ deposited by him in a special account in the state treasurer's office treasury."

Section 21. Section 44-2-316, MCA, is amended to read:

"44-2-316. Assessment for personnel. A special ~~prorated~~ assessment pro--rata shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which

there is a federal intertie. This assessment shall be made monthly ~~the same~~ as is the operational assessment charge. It shall be transmitted, and deposited, and drawn by warrant as are other warrants as provided in 44-2-312 through 44-2-315, except that the assessment shall ~~may~~ not be levied against the one central station for which the assessment is made."

Section 22. Section 44-3-213, MCA, is amended to read:

"44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, ~~he the state medical examiner~~ shall make available in writing to the county attorney his determination as to the cause of death."

Section 23. Section 44-3-404, MCA, is amended to read:

"44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than \$500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) ~~withfully~~ purposely fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, ~~withfully~~ purposely touches, removes, or disturbs

a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death."

Section 24. Section 44-4-101, MCA, is amended to read:

"44-4-101. Position established. There is created within the department of justice ~~a the position of~~ training coordinator for county attorneys."

Section 25. Section 44-4-103, MCA, is amended to read:

"44-4-103. Functions. The training coordinator shall perform the functions assigned by the department--~~head~~ attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout ~~the state of~~ Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or

1 law enforcement official;

2 (5) applying for and disbursing federal funds
3 available to aid the prosecutorial function."

4 Section 26. Section 44-11-202, MCA, is amended to
5 read:

6 "44-11-202. Employing entity to pay normal expenses of
7 assisting officer -- reimbursement. (1) The law enforcement
8 entity employing a peace officer who renders assistance
9 shall make all wage, pension, and disability payments and
10 payments for damage to clothing and equipment due to the
11 officer as a result of the rendering of assistance and shall
12 pay any medical expense incurred by the officer in rendering
13 assistance for which the officer is not otherwise entitled
14 to reimbursement by operation of law or a contract. The
15 employing entity shall also provide workers' compensation
16 coverage for its employees while they are rendering
17 assistance.

18 (2) ~~Upon making such payments such if it so requests~~
19 ~~the law enforcement entity shall, must if it so requests,~~ be
20 reimbursed by the law enforcement entity that requested the
21 services for all payments made for wages and damage to
22 clothing and equipment and for any medical expense for which
23 neither the employing entity nor the officer is otherwise
24 entitled to reimbursement by operation of law or a
25 contract."

1 Section 27. Section 39-72-606, MCA, is amended to
2 read:

3 "39-72-606. Autopsy. Upon the filing of a claim for
4 compensation for death caused by an occupational disease
5 where if an autopsy is necessary to determine the cause of
6 death, an autopsy shall be ordered by the division. The
7 autopsy shall be made under the supervision of the county
8 coroner or a medical examiner. The division may designate a
9 duly licensed physician who is a specialist in such
10 examinations to perform or attend the autopsies and to
11 certify his findings thereon. The findings shall be examined
12 by the physicians submitting reports under the provisions of
13 39-72-604 and 39-72-605 before the final reports under those
14 sections are submitted to the division."

15 Section 28. Section 50-15-403, MCA, is amended to
16 read:

17 "50-15-403. Preparation of certificate when death
18 medically attended. A person in charge of interment shall:

19 (1) obtain personal data required by the department
20 from persons best qualified to supply the data and enter it
21 on the death or fetal death certificate;

22 (2) ~~also~~ present the death certificate to the physician
23 last in attendance upon the deceased, or the coroner having
24 jurisdiction, or the state medical examiner, who shall
25 certify the cause of death according to his best knowledge

1 and belief; or

2 ~~(3)(b)~~ present the fetal death certificate to the

3 physician, midwife, or other person in attendance, who shall

4 certify the fetal death and supply any pertinent additional

5 medical data;

6 ~~(4)(3)~~ notify the local registrar if the death or

7 fetal death occurred without attendance or if the physician

8 last in attendance failed to sign the death certificate;

9 ~~(5)(4)~~ file the death or fetal death certificate with

10 the local registrar within 3 days after the occurrence."

11 Section 29. Section 50-15-404, MCA, is amended to

12 read:

13 "50-15-404. Preparation of certificate when death not

14 medically attended. (1) If the death or fetal death occurred

15 without medical attendance or the physician last in

16 attendance failed to sign the death certificate, the local

17 registrar may complete the certificate on the basis of

18 information received from persons having knowledge of the

19 facts.

20 (2) If it appears the death or fetal death resulted

21 from other than natural causes, the local registrar shall

22 notify the coroner and the state medical examiner for

23 investigation and certification."

24 Section 30. Section 50-15-405, MCA, is amended to

25 read:

1 "50-15-405. Permit for disposition of body. (1) No

2 dead body ~~shall~~ may be disposed of or removed from a

3 registration district until a permit for disposition or

4 removal has been issued by the local registrar.

5 (2) No permit ~~shall~~ may be issued until a death

6 certificate, fetal death certificate, or notice of delay as

7 required in subsection (3) of this section has been filed

8 with the local registrar.

9 (3) If the cause of death or fetal death cannot be

10 determined within 3 days after the occurrence, the attending

11 physician, or coroner, or medical examiner shall give the

12 local registrar written notice of the reason for delay so

13 that a permit may be issued for disposition of the body."

14 Section 31. Section 61-7-111, MCA, is amended to read:

15 "61-7-111. Accident report forms. (1) The division

16 shall prepare and, upon request, supply to police

17 departments, coroners, medical examiners, sheriffs, garages,

18 and other suitable agencies or individuals forms for

19 accident reports required hereunder, appropriate with

20 respect to the persons required to make such reports and the

21 purposes to be served. The written reports to be made by

22 persons involved in accidents and by investigating officers

23 shall call for sufficiently detailed information to disclose

24 with reference to a traffic accident the causes, conditions

25 then existing, and the persons and vehicles involved.

1 (2) Every accident report required to be made in
2 writing shall be made on the appropriate form approved by
3 the division and shall contain all of the information
4 required therein unless not available.

5 (3) The division may suspend the license or permit to
6 drive of any resident ~~and any or the~~ nonresident operating
7 privilege of any person failing to report an accident as
8 herein provided until such report has been filed. Any person
9 convicted of failing to report an accident by the quickest
10 means of communication or failing to forward a written
11 report as required herein ~~shall be deemed~~ is guilty of a
12 misdemeanor and ~~punished punishable~~ by a fine of not more
13 than \$25."

14 Section 32. Section 61-7-112, MCA, is amended to read:

15 "61-7-112. Coroners ~~and medical examiners~~ to report.
16 Every ~~Each~~ coroner, ~~medical examiner,~~ or other official
17 performing like functions shall, on or before the 10th day
18 of each month, report in writing to the division the ~~death~~
19 ~~deaths~~ of ~~any--person~~ all persons within his respective
20 jurisdiction during the preceding calendar month as the
21 result of a traffic accident ~~accidents,~~ giving the time and
22 place of the each accident and the circumstances relating
23 thereto."

24 Section 33. Repealer. Sections 31-102, 80-2001, and
25 82-3902, R.C.M. 1947, are repealed.